
(2008) 04 JH CK 0034
In the Jharkhand High Court

Anil Kumar Choudhary and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-04-2008

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 85
Constitution of India, 1950 — Article 16

Citation : (2008) 2 JCR 624

Hon'ble Judges : M. Karpaga Vinayagam, C.J;Dabbiru Ganeshrao Patnaik, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M. Karpaga Vinayagam, C.J.—The petitioners have filed this writ petition praying for a declaration that Rule 4(2)(6) of the Bihar State Nationalised Elementary School Teacher (Transfer and Disciplinary Action) Rules, 1994, as adopted by the Government of Jharkhand under the provisions of Section 85 of the Bihar Re-Organisation Act, 2000 is ultra vires to the extent it lays down the eligibility of Home District necessary for inter-district transfer of the male teachers on the ground that the same is against the provisions of Article 16(2) of the Constitution of India.

2. The case of the petitioners is as follows:

(i) The petitioners were appointed on the post of Elementary Teachers in January 2000. Some of the petitioners were posted at Palamau and some of the petitioners were posted at Latehar.

(ii) They have completed five years of minimum service in the Government of Jharkhand. They filed their application for inter-district transfer in view of Rule 4 of the Bihar State Nationalised Elementary School Teacher (Transfer and Disciplinary Action) Rules, 1994.

(iii) The District Education Establishment Committee considered the applications for inter-district transfer and their names were recommended to the Director,

Primary Education, but their applications were, ultimately returned by the Director, Primary Education on the ground that the petitioners belonging to the district of Latehar did not fulfill the criteria of home district.

(iv) Rule 4 of the Rules, 1994 lays down the condition under which any teacher can be transferred from one district to another and Rule 4(2) (5) lays down that during entire service tenure of any teacher inter-district transfer shall be done only once.

(v) Rule 4(2)(6) provides that in case of male teachers, they can be transferred in their home district in case of inter-district transfer, but the same Rule provides that In case of female teachers, they have been given three options in case of inter district transfer and according to this Rule, they can be transferred to their Home District or to the Home District of their husband or to the place of posting of their husband.

(vi) The aforesaid provisions were not amended after re-organisation of the State of Bihar and Jharkhand, as a result of which the petitioners, whose home district fall within the territory of re-organised State of Bihar have been denied the benefit of inter-district transfer.

(vii) On account of re-organisation of States, all the petitioners, whose home districts fell within the territory of re-organised State of Bihar, have settled in one or the other districts within the re-organised State of Jharkhand and are having residence within the State of Jharkhand and it is on this account that they prayed for inter-district transfer from their place of posting district to the district of their permanent residence.

(viii) But, in the instant case, the petitioners have been denied inter-district transfer only on the ground that their home district is not falling in the Jharkhand State.

(ix) Therefore, the Rule 4(2)(6) of the Rules, 1994 and Amended Rules, 1997 duly adopted by the State of Jharkhand is ultra vires to the provisions of Article 16(2) of the Constitution of India as it lays down the criterial of only Home District in case of male teachers as a necessary eligibility for inter-district transfer.

3. In elaborating this point, the learned Counsel for the petitioners would argue at length and cite 2003 (1) JCR 3 (Jhr) (Spl. Bench).

4. In reply to the arguments advanced by the learned Counsel for the petitioner, the learned Counsel for the State would submit that it is not ultra vires to the provisions of Article 16(2) of the Constitution of India and the judgment relied upon by the petitioner, namely 2003 (1) JCR 3 (Jhr) (Spl. Bench) is not applicable to the present case as the said judgment relates to the definition of local persons, which is a totally different matter.

5. We have carefully considered the submissions made by the learned Counsel for petitioners as well as the learned Counsel for the respondents.

6. The main ground urged by the learned Counsel for the petitioners to challenge the relevant Rules is restrictions of inter-district transfer from one district to another is ultra vires to the provisions of the Constitution of India.

7. It is pointed out by the learned Counsel for the respondents that the cadre of elementary teachers, i.e., the petitioners is a district cadre. At the initial point of appointment, itself, the elementary teachers are appointed at district level. The very appointment of the petitioners has been made on district cadre for a particular district.

8. The rule framed by the Government is in the form of relaxation, which is being granted to elementary teachers allowing them inter district transfer only once in their entire service tenure subject to conditions among other that the transfer shall be made in respect of male teachers in their home district only. The said relaxation had been granted keeping in view the fact that for a certain period, the district cadre employees should be allowed to serve in their home districts in order to increase their efficiency in their working.

9. The main contention by the learned Counsel for the petitioners is that the said relaxation granted in favour of the elementary teachers, male and female is contrary to the provisions of Article 16(2) of the Constitution of India, on the ground that after re-organisation of the States, the petitioners' services are in the State of Jharkhand whereas their home districts belongs to the State of Bihar, thereby they cannot avail the benefit of the said Rule. This contention is not tenable because reorganisation of the State is a fait accompli and merely because of the petitioners home district, after bifurcation, falls in the successor State, it does not render the rule framed by the Government as ultra vires to the provisions of Article 16(2) of the Constitution of India.

10. According to the Recruitment Rules from the beginning the appointment of elementary teachers are done strictly on the recommendation of the competent authority. Under such circumstances, candidates for the post of elementary teachers are given liberty to apply from the district of their choice and after fulfilling the requisite qualification, they are appointed in the district.

11. Since the cadre of elementary teachers is district cadre, normally they are allowed to be transferred within the district according to the provisions of Nationalised Elementary School Teacher (Transfer and Disciplinary Action) Rules, 1994 and amended Rules, 1997. There is a provision for inter-district transfer in certain cases, subject to the fulfillment of the conditions enumerated in the provisions of the said mentioned Rules and those conditions are applicable to every teacher of the elementary school who are desirous of inter-district transfer. As such, the provisions laid down in the said Rules by way of relaxation are not contrary to the provisions of Article 16(2) of the Constitution of India.

12. The inter-district transfer is not a general transfer for an employee, who belongs to district cadre, i.e., in the case of district cadre, the employees are required to work within the district during the entire service tenure, as such, it

cannot be contended that it is contrary to Article 16(2) of the Constitution of India.

There is no merit in this writ petition. Hence, It is dismissed.

D.G.R. Patnaik, J.

13. I agree.